$~
* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
5.
+ **W.P.(C) 1013/2016**

ALPHA INFRAVISION PVT LTD ..... Petitioner
Through: Mr. V. S. Negi, Advocate.

versus

UNION OF INDIA & ANR. ..... Respondent
Through: Mr. Dev P. Bhardwaj, CGSC for R-1.
Mr. Satish Kumar, Senior Standing counsel
For R-2.

CORAM:
JUSTICE S.MURALIDHAR
JUSTICE VIBHU BAKHRU
ORDER
% **10.05.2016**

1. The Petitioner is aggrieved by the impugned order dated 22nd September 2015 passed by the Customs, Central Excise & Service Tax Settlement Commission, New Delhi ('Settlement Commission') to the extent that it imposed a penalty of Rs.30,000 on the Petitioner.

2. The Petitioner was manufacturing ready mixed concrete on job work basis from April 2013 onwards. It is stated that as per the advice of the Service Tax Department, the Petitioner got itself registered and started paying service tax. On 8th January 2014 the officers of Anti-Evasion

(Central Excise & Service Tax), Ghaziabad visited the factory of the Petitioner and took the stand that the job work activity undertaken by the Petitioner amounts to manufacture and not service and that the Petitioner was required to pay excise duty. The Petitioner then got itself registered under Central Excise Act, 1944 ('CE Act') on 17th January 2014. This was followed by a show cause notice dated 12th December 2014 being issued to the Petitioner demanding central excise duty for the period 1st April 2013 to 13th January 2014.

3. It was at this stage that the Petitioner approached the Settlement Commission which by the impugned order dated 22nd September 2015 has determined the central excise duty payable by the Petitioner at Rs.9,43,5790. The excess payment of Rs.2,94,215 was ordered to be refunded. The penalty amount and interest paid was asked to be adjusted against the interest amount *qua* the excise duty determined.

4. The Court is of the view that there was no justification for the Settlement Commission to have imposed a penalty of Rs.30,000 on the Petitioner., The Petitioner acted *bona fide* on the advice of the Service Tax Department and initially got itself registered with the said Department. Later, again on the

insistence of the Excise Department, the Petitioner got registered under the CE Act. There was no attempt by the Petitioner to deliberately evade payment of tax.

5. Accordingly, the Court sets aside the penalty of Rs.30,000 imposed by the Settlement Commission by the impugned order dated 22nd September 2015. The said penalty amount, which has been adjusted against the penalty already paid by the Petitioner, shall be refunded to the Petitioner within one month from today.

6. The petition is disposed of in the above terms.

S.MURALIDHAR, J

VIBHU BAKHRU, J

MAY 10, 2016
mg